

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CIVIL ACTION NO. 3:16-CV-00830-RJC-DSC**

THIS MATTER is before the Court on the “Defendants’ Motion to Dismiss Plaintiff’s First Amended Complaint” (document # 19) filed March 20, 2017 and the parties’ associated briefs and exhibits. See documents ## 20, 21, 23 and 24.

This matter was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1) and is now ripe for the Court's consideration. The Court has carefully examined the record, the parties' arguments, and the applicable authorities. For the following reasons, the Court will allow Plaintiff to file a second amended complaint.

In Plaintiff's brief in response to Defendants' Motion to Dismiss, she requests leave to amend her complaint to include additional factual allegations. See document #21 at page 10. Rule 15 of the Federal Rules of Civil Procedure governs amendments to pleadings. Rule 15(a)(1) grants a party the right to "amend its pleading once as a matter of course," if done within twenty-one (21) days after serving the pleading, Fed. R. Civ. P. 15(a)(1)(A), or, "if the pleading is one to which a responsive pleading is required," a party may amend once as a matter of course, provided that it

does so within “21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.” Fed. R. Civ. P. 15(a)(1)(B). Rule 15(a)(2) provides that “[i]n all other cases, a party may amend its pleading only with the opposing party’s consent or the court’s leave.” Fed. R. Civ. P. 15(a)(2). The Rule further provides that leave to amend shall be freely given “when justice so requires.” *Id.* Since leave to amend shall be freely given excepting circumstances not present here, the Court will allow Plaintiff to amend her Complaint.

It is well settled that an amended pleading supersedes the original pleading, and that motions directed at superseded pleadings are to be denied as moot. Young v. City of Mount Ranier, 238 F. 3d 567, 573 (4th Cir. 2001) (amended pleading renders original pleading of no effect); Turner v. Kight, 192 F. Supp. 2d 391, 397 (D. Md. 2002) (denying as moot motion to dismiss original complaint on grounds that amended complaint superseded original complaint). Consequently, the Court orders that “Defendants’ Motion to Dismiss...” (document #19), be administratively DENIED as moot without prejudice. This ruling is without prejudice to Defendants’ ability to assert any relevant arguments in response to Plaintiff’s amended pleading.

IT IS HEREBY ORDERED that:

1. Plaintiff shall file her second amended complaint within fourteen (14) days of this Order.
2. “Defendants’ Motion to Dismiss Plaintiff’s First Amended Complaint” (document #19) is DENIED administratively as moot without prejudice.
3. The Clerk is directed to send copies of this Order to counsel for the parties, including but not limited to moving counsel; and to the Honorable Robert J. Conrad, Jr.

SO ORDERED.

Signed: May 4, 2017

D S Cayer

David S. Cayer
United States Magistrate Judge

